

~~CONFIDENTIAL~~

FEC-230

175

FEC-230

12 May 1947

FAR EASTERN COMMISSION

POLICY ON EXCESSIVE CONCENTRATIONS OF ECONOMIC
POWER IN JAPAN

Note by the Secretary General

1. The enclosure, a statement of proposed policy with respect to excessive concentrations of economic power in Japan, submitted by the United States Representative, is circulated herewith for the consideration of the Far Eastern Commission and is referred to COMMITTEE NO. 2: ECONOMIC AND FINANCIAL AFFAIRS.

2. Enclosure "A" is the statement of transmittal of the United States Government. Enclosure "B" is the text of the proposed policy.

3. The attention of all concerned is invited to the classification of this document which prohibits the dissemination of the information contained therein to unauthorized persons or to the press.

NELSON T. JOHNSON
Secretary General

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Authority 775018

FEC-230

~~CONFIDENTIAL~~

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ENCLOSURE "A"

STATEMENT OF TRANSMITTAL

The United States Government desires to present herewith to the Far Eastern Commission a report of its mission on Japanese combines, and concurrently to recommend for adoption by the Commission certain policies with respect to the concentration of economic power in Japanese industry, finance, and trade.

It is the belief of this Government that the existence of the Zaibatsu, and the monopolistic controls exercised by these giant combines over Japanese economic life, have been a major factor in fostering and supporting Japanese aggression. The dissolution of excessive private concentrations of economic power is essential to the democratization of Japanese economic and political life. It therefore constitutes, in the United States view, one of the major objectives of the occupation.

This basic occupation policy with respect to the Zaibatsu is stated in Basic Post-Surrender Policy for Japan (FEC-014), and is reaffirmed in Basic Initial Post-Surrender Directive to SCAP for the Occupation and Control of Japan (FEC-015). Substantial steps to implement this policy have already been undertaken by the appropriate Japanese authorities, at the direction of or with the approval of SCAP, in the organization and operations of a Japanese Holding Company Liquidating Commission, in providing for an economic purge, and in initiating other measures with respect to combines, control associations and cartel arrangements.

To aid in formulation of comprehensive policies, standards, and procedures a mission headed by Corwin D. Edwards was dispatched to Japan in January 1946. Its report is submitted herewith.

On the basis of that report, the United States Government has prepared the following statement of broad policy with respect to the Zaibatsu question, which it desires to submit for approval by the Far Eastern Commission. In many respects, this statement incorporates measures which already have been or are being implemented by the appropriate Japanese authorities, at the direction of or with the approval of SCAP, in accordance with the directives referred to above.

REGRADED UNCLASSIFIED
ORDER SEC ARMY BY TAG PER

720014

Enclosure "A"

-1-

FEC-230

DECLASSIFIED
Authority 775018

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~~CONFIDENTIAL~~

ENCLOSURE "B"

POLICY ON EXCESSIVE CONCENTRATIONS OF ECONOMIC
POWER IN JAPAN

1. Objective

The over-all objective of occupation policy in dealing with excessive concentrations of economic power in Japan should be to destroy such concentrations as may now exist, and to prevent the future creation of new concentrations. Especial care should be taken to avoid the futile gesture of destroying one Zaibatsu class only to create another; a drastic change in the nature as well as the identity of the groups controlling Japanese industry and finance should therefore be effected. Realization of this change will require achievement of the following specific objectives:

a. Dissolution of all excessive concentrations of economic power, unless technological considerations require their continuation (paragraphs 2, 3, 4, below).

b. Elimination of the excessive economic power of persons formerly exercising control over these concentrations, and of certain individuals close to such persons (paragraphs 5, 6, below).

c. Support for varied and diffused types of private ownership of elements of these dissolved concentrations, as well as support for government ownership of such of these concentrations as cannot be dissolved and of such elements of the dissolved concentrations as do not lend themselves to competitive operation (paragraphs 7, 8, below).

d. Elimination of financial support for excessive concentrations -- through the divestiture of Zaibatsu holdings in banks and insurance companies, through an increase in the number of sources of credit, through the termination of alliances between financial and non-financial institutions, and through elimination of government favoritism towards certain financial institutions (paragraphs 9, 10, 11, 12, below).

e. Destruction of legal support for excessive concentrations -- through the termination of control legislation, through the creation of an anti-trust law, through changes in the patent law, through amendments to corporate law, and through alterations in current tax law and practices (paragraphs 13, 14, 15, 16, 17, below).

f. Strengthening of the instruments necessary to effect the above policies -- through financial and technical aid to preferred types of purchasers, through the creation of public support for anti-Zaibatsu actions of the Japanese Government, and through measures to assure the independence of government personnel from Zaibatsu influences (paragraph 18, 19, 20, below).

It is considered that the requirements of the Potsdam Declaration will not have been fulfilled until the objectives listed above have been met through the application of measures specified in succeeding paragraphs. It is also considered, however, that the means to be employed in compelling the

Enclosure "B"

-2-

DECLASSIFIED
Authority 775018

~~CONFIDENTIAL~~
FEC-230
REGRADED UNCLASSIFIED
ORDER SEC ARMY BY TAG PER

720014

~~CONFIDENTIAL~~

Japanese Government to effectuate these measures, and the timing of such means, are matters for executive decision by SCAP. In general, the Japanese Government should be required to take such administrative, legislative and judicial measures as will be consistent with its structure and constitutional powers and will accomplish the policy set out herein.

2. Definition of an Excessive Concentration

For purposes of the policies set forth in this paper, an excessive concentration of economic power should be defined as any private enterprise conducted for profit, or combination of such enterprises, which, by reason of its relative size in any line or the cumulative power of its position in many lines, restricts competition or impairs the opportunity for others to engage in business independently, in any important segment of business.

In applying this standard, it should be presumed, subject to refutation, that any private enterprise or combination operated for profit is an excessive concentration of economic power if its asset value is very large; or if its working force (i. e., the working force required to operate its facilities at capacity as evidenced by its peak past employment figure) is very large; or if, though somewhat smaller in assets or working force, it is engaged in business in various unrelated fields, or if it controls substantial financial institutions and/or substantial industrial or commercial ones; or if it controls a substantial number of other corporate enterprises; or if it produces, sells or distributes a large proportion of the total supply of the products of a major industry.

Absolute size, as well as position within a given industry, is to be considered grounds for defining a specified concentration as excessive. It is desired to eliminate not only monopolies but also aggregations of capital under the control of a given enterprise which are so large as to constitute a material potential threat to competitive enterprise.

All larger Japanese enterprises should immediately be surveyed by SCAP in the light of the above standards. Uncertainty as to whether any specified enterprise is covered by these standards should be resolved in favor of coverage since it is intended that ownership of the bulk of Japanese large-scale industry should be affected by the policies set forth in this paper. It is understood that SCAP's Schedule of Restricted Concerns, as amended from time to time in accordance with the procedures provided for that purpose, comprehends the Japanese enterprises considered to be excessive concentrations within the meaning of this paper.

3. Dissolution vs. Non-Dissolution of Excessive Concentrations

Excessive concentrations of economic power should immediately be dissolved into as many non-related units as possible, no one of which would be covered by any of the definitions of an excessive concentration presented in paragraph 2. Such dissolution should not be affected, however, where the technological need for large scale operation is such that dissolution would clearly cause a drastic reduction in operating efficiency. It should be presumed, subject to refutation, that such a drastic reduction would not result from the dissolution

Enclosure "B"

-3-

FEC-230

REGRADED UNCLASSIFIED
ORDER SEC ARMY BY TAG PER

DECLASSIFIED
Authority 775018

~~CONFIDENTIAL~~

720014

~~CONFIDENTIAL~~

of holding companies; or from the severance of ties of ownership, directorship, and officership between operating companies; or from the severance from operating companies of portions of such companies, where these portions are in unrelated industries, or where they have had a separate corporate existence within the last five years, or where they are so separated from one another physically and technologically that they do not in fact have a common operating management. Treatment of concentrations which are to be dissolved is specified in paragraph 4; treatment of concentrations which are not to be dissolved is specified in subparagraph 8 a. The provisions of paragraph 5 should apply equally to persons and holdings in concentrations which are, and are not, to be dissolved.

4. Policy with Respect to Excessive Concentrations Which are to be Dissolved

The following measures should be undertaken with respect to excessive concentrations of economic power which are to be dissolved:

a. All concerns in these excessive concentrations which are merely holding companies should be dissolved and divested of their security and property holdings.

b. The units, other than those described under a above, into which these excessive concentrations are broken down should, in the case of non-financial enterprises (insurance companies being considered financial enterprises), be divested of any securities which they may hold in other concerns, including concerns not a part of any excessive concentration of economic power.

c. All officers (auditors are to be considered officers) and directors of these operating units, and of operating units in the financial field as well, should surrender all offices and directorships except those in the company in which they are principally engaged, and should be forbidden to acquire any offices and directorships outside of whatever company they may be principally engaged in, at any time in the future, except as provided in paragraph 16. This policy does not apply to persons specified in paragraph 5, who will be dealt with in accordance with the provisions of that paragraph.

d. Certain contractual and service arrangements between the units into which these excessive concentrations have been dissolved should be terminated, including arrangements for performance of central office services, inter-change of personnel, executive agency, and preferential or exclusive trading rights. Resumption of similar arrangements should be prohibited for a time sufficient to ensure bona fide severance of the arrangement.

e. The operating units into which these excessive concentrations are dissolved should grant licenses on non-discriminatory terms to all applicants under patents which they now hold and under licenses which give them rights to sub-license; should surrender any exclusive or preferential rights which they now enjoy under patent licenses granted them by others; and, during the period of transition, should make available to all comers on non-discriminatory terms any technology and patent rights which they make available to other concerns which have been a part of the same combine. Where the units in question hold

Enclosure "B"

- 4 -

FEC-230

REGRADED UNCLASSIFIED
ORDER SEC ARMY BY TAG ER

720014

~~CONFIDENTIAL~~

DECLASSIFIED
Authority 775018

~~CONFIDENTIAL~~

~~CONFIDENTIAL~~

license under Japanese patents owned by foreigners under terms incompatible with the sense of this paragraph, these terms should be renegotiated. Where the licensor will not agree to renegotiation, the Japanese unit should cease utilizing the license, so that the Japanese government can cancel the patent or open up the patent to licensing on non-discriminatory terms pursuant to Chapter II, Article 41 of the Patent Law.

f. Mergers of any portions of divested or dissolved concerns should be prohibited, except when permission is granted after an affirmative showing of public interest.

5. Treatment of Personnel in Excessive Concentrations

All individuals who have exercised controlling power in or over any excessive concentration of economic power, whether as creditors, stockholders, managers, or in any other capacity, should be:

a. Divested of all corporate security holdings, liquid assets, and business properties;

b. ejected from all positions of business or governmental responsibility;

c. forbidden from purchasing corporate security holdings or from acquiring positions of business or governmental responsibility at any time during the next ten years.

All other persons likely to act on behalf of the individuals described above should be subjected to the measures specified below. In determining who such persons may be, such factors as ties by blood, marriage, adoption or past personal relationship should be taken into account. (The phrase "past personal relationship" is used in the previous sentence chiefly in reference to persons who have been placed in positions of substantial responsibility in holding companies or their subsidiaries by the Zaibatsu families, but it should also be taken to refer to persons otherwise associated with the Zaibatsu whom SCAP may consider to be acting as "fronts" for the latter.) Such persons should be:

a. divested of liquid assets and business properties, where they possess such assets or properties in amounts of any significance; and divested of all corporate security holdings in any excessive concentration of economic power and corporate security holdings representing an interest of more than 1% in any other major private enterprise;

b. ejected from all positions in business or government which might be used to favor Zaibatsu interests;

c. forbidden from purchasing corporate security holdings, or from acquiring positions in business or government which might be used to favor Zaibatsu interests, at any time during the next ten years.

Where doubt exists as to whether a given person should be covered by the above policies, that doubt should be resolved by SCAP in favor of coverage, since it is desired to divest a sufficient number of holdings to effect a thorough-going transformation of the ownership and control of large-scale Japanese industry.

REGRADED UNCLASSIFIED
ORDER SEC ARMY BY TAG PER

Enclosure "B"

-5-

720014

FEC-230

DECLASSIFIED
Authority 775018

~~CONFIDENTIAL~~

~~CONFIDENTIAL~~

6. Compensation of Divested Holdings

Individuals covered by the definitions in paragraph 5 above shall be indemnified, provided that such indemnification shall be made in such manner and degree as will prohibit their buying back a place of power in the Japanese economy. In order to bring this about, it is essential that certain measures be taken in the dissolution of excessive concentrations and in the sale of the assets of these persons. The measures set out below have been designed with a view to preventing the payment of excessive indemnification to the persons covered in paragraph 5, without affecting to the same degree and manner the compensation of others who have invested in enterprises considered to be excessive concentrations. The determination of what is an excessive indemnification shall be made on the basis of the objectives of these measures. Accordingly:

a. Policies which facilitate the conveyance of divested holdings to new owners should not be modified by an effort to obtain any specified degree of compensation for the former owners of these holdings. The over-riding objective should be to dispose of all the holdings in question as rapidly as possible to desirable purchasers; the objective should be achieved even if it requires that holdings be disposed of at a fraction of their real value. In negotiated sales of divested holdings to desirable types of purchasers, the purchaser's ability to pay, rather than the real value of the holding, should affect the fixing of prices and terms of payment.

b. A tax of not less than 90% should be levied on any amount by which the gross sales price exceeds the August 1945 market price (in the case of securities having a market), or the book value as of the same date (in the case of other securities or property). To prevent this tax from resulting in injury to non-Zaibatsu individuals, the following priority should govern the disposition of funds secured through the sale of divested assets:

First Priority: All taxes due, other than the 90% tax referred to above, and all liabilities should be paid in full.

Second Priority: All non-Zaibatsu equity holders, where such exist should be paid up to the amount of the August 1945 market price of their holdings (or the August 1945 book value in the case of securities not having a market).

Third Priority: The 90% tax described above should be paid in full.

Fourth Priority: All Zaibatsu equity holdings should be paid up to the amount of the August 1945 market price of their holdings (or the August 1945 book value in the case of securities not having a market), and remaining funds should be distributed among all equity holders in proportion to the amount of their holdings.

To prevent observance of the priorities cited above from resulting in total expropriation of Zaibatsu shareholders, proceeds of the 90% tax should be partially refunded to Zaibatsu shareholders, where necessary to provide such shareholders with a total compensation not exceeding 15% of the August 1945 market value (or book value where no market existed) of their divested holdings.

Enclosure "B"

-6-

FEC-230

DECLASSIFIED
Authority 775018

~~CONFIDENTIAL~~

REGRADED UNCLASSIFIED
ORDER SEC ARMY BY TAG PER
720014

~~CONFIDENTIAL~~

In lieu of the 90% tax specified above, a steeply progressive tax may be specifically imposed (in addition to capital levy) on funds which are assigned to the individuals described in paragraph 5 as a result of the sale of assets divested from such individuals.

c. A 75% tax should be levied on any gain realized through resale of divested holdings within two years; and a 50% tax should be levied on any gain realized through resale within four years.

d. Sums credited to persons defined in paragraph 5 above as compensation should be invested in government bonds whose total par value will not exceed the sum thus credited and which will pay a rate of interest no higher than the lowest rate being paid by comparable government bonds. Such bonds should not be saleable, transferable, or usable as collateral, but should be acceptable for taxes, when all other sources of liquid assets have been dissipated, for ten years from the completion of the sale of such holdings. During this period, cash payments, even of interest, should be limited to sums required for accustomed living expenses, in order that there may be no surplus for investment.

e. After the process of dissolution and liquidation has been well advanced and before the end of the ten-year freeze period, the program should be reviewed to determine whether the sums credited to persons defined in paragraph 5 above will be so large as to make probable a revival of Zaibatsu power. If it is determined that the probability of such a revival still exists, added measures appropriate to the circumstances existing at the time should be applied to remove the probability.

f. Before the freeze is terminated, succession by the owner's heirs should be required, coupled with payment of steeply graduated inheritance taxes.

7. Liquidation of Divested Holdings

Liquidation of divested securities and properties should be effected rapidly in a period of about two years from the organization of the Holding Company Liquidation Commission. The plan of liquidation should allow for:

a. pro-rata distribution of security holdings to individual stockholders of the holding concern other than those specified in paragraph 4 (and in some cases to financial institutions which own the holding concern's stock).

b. exchange and cancellation of securities between companies which hold each other's stock;

c. negotiated sale of securities and properties;

d. if necessary to complete the liquidation within about two years, invitation of bids upon securities from eligible purchasers, and acceptance of the highest bids however low such bids may be.

Liquidation should be effected by the Holding Company Liquidation Commission, a wholly public agency of the Japanese Government operating under close supervision of SCAP. Especial care should be taken not to allow representatives of large

Enclosure "B"

-7-

FEC-230

DECLASSIFIED
Authority 775018

~~CONFIDENTIAL~~

REGRADED UNCLASSIFIED
ORDER SEC ARMY BY TAG PER

720014

~~CONFIDENTIAL~~

scale business, large scale trade, or large scale finance, or of political groups, sympathetic to such business, trade, or finance, to have any place on this Commission. All nominations to the Commission should be approved by SCAP, its personnel should be removable by SCAP, and it should be required that all sales effected by the Commission be revocable by SCAP. Public announcement should be made of the terms and conditions of all sales.

8. Sale of Divested Holdings

In the sale of divested security and property holdings, the over-riding objective should be to transfer ownership and control of these holdings to groups and individuals in such a way as to secure, in addition to the requisite managerial skill, protection against the future creation of excessive concentrations of economic power, through a wider distribution of income and of ownership of the means of production and trade. In order to achieve this objective, the following criteria are set forth as a guide to the selection of purchasers and should be given priority, in this connection, over the purchaser's present ability to pay:

a. Divested holdings in excessive concentrations of economic power which are not to be dissolved for technological reasons, and in other enterprises such as public utilities which do not lend themselves to competitive operation, may be subjected to purchase by the national and local governments of Japan, provided, such purchases are accomplished and approved through democratic processes. Where such concentrations or enterprises are not purchased by these governments, their rates and profits should be subjected to open and effective regulation by impartial public commissions. When the National Government or a local government purchases divested equity holdings in a given concern, it should also give consideration to the concomitant purchase of non-Zaibatsu equity holdings in that concern. Every effort should be made, however, to dissolve all excessive concentrations of economic power, rather than to assign them to government ownership or regulation, until and unless the democratization of the Japanese Government has proceeded sufficiently to render it a truly trustworthy instrument for economic control.

b. In connection with non-governmental purchases, sales to wealthy and economically powerful persons and corporations should be held to a minimum, in order not to lay the groundwork for the creation of a new Zaibatsu class. A decided purchase preference, and the technical and financial aid necessary to take advantage of that preference, should be furnished to such persons as small or medium entrepreneurs and investors, and to such groups as agricultural or consumer cooperatives and trade unions, whose ownership of these holdings would contribute to the democratization of the Japanese economy. Every encouragement should be given such persons and groups to purchase divested holdings, even if they only wish to buy a small proportion of the holdings offered for sale in a given enterprise. In the case of negotiated sales, prices should be fixed with special reference to such purchasers' ability to pay, as should the time period allowed for payment of these prices.

c. No single person, or enterprise, or group of allied persons or enterprises, should be allowed to purchase a number of divested holdings so large as to render probable

Enclosure "B"

-8-

FEC-230

DECLASSIFIED
Authority 775018

REGRADED UNCLASSIFIED
ORDER SEC ARMY BY TAG PER

~~CONFIDENTIAL~~

720014

~~CONFIDENTIAL~~

the future creation of a concentration of economic power approaching in size or character those concentrations defined as excessive under paragraph 2.

d. The purchase of divested holdings in ex-Zaibatsu concerns by the employees of such concerns should be encouraged only if a vigorous effort is made to disperse ownership widely through the working force in question, rather than to concentrate it in a few top executives. To render such dispersion possible, provision should be made for financing these purchases at low prices over a long period of time, possibly through wage deductions. Especial care should be taken to prevent the use of groups of employees in ex-Zaibatsu concerns as purchasing screens for persons disqualified from making these purchases themselves.

e. All sales should be screened to exclude cloakes for Zaibatsu and for other groups who fall under any of the purge directives or purge paragraphs of the Basic Directive.

The criteria specified above should be adhered to regardless of the wishes of non-Zaibatsu stockholders in the enterprises concerned.

9. Liquidation of Zaibatsu Financial Enterprises

Divested holdings in Zaibatsu financial and insurance enterprises should be liquidated and disposed of in accordance with the principles laid down in paragraphs 5, 6, and 7 for the liquidation of non-financial enterprises. Policyholders in Zaibatsu insurance companies should be aided in buying stock of these concerns which is now owned by the Zaibatsu, where the condition of these concerns is sufficiently strong so that the policyholders desire to make such purchases. Purchase should be facilitated, under these circumstances, by liberal loans on policies, or payment should be permitted in the form of a reduction in the face value of policies. Zaibatsu insurance companies which are insolvent should be mutualized by cutting back the face amount of outstanding policies, where sufficient assets still exist to render this procedure practicable. In the reconstitution of insolvent financial enterprises, stock held by Zaibatsu holding companies and Zaibatsu individuals should be subordinated to that of other stockholders.

10. Sources of Credit

As a fundamental measure to encourage competitive operation of the Japanese economy, the number of independent sources of credit should be increased substantially, although not to the point where the individual banks would be so small as to be unable to secure the diversification of loans necessary to banking safety. The strengthening of local savings banks, and of rural and urban credit cooperatives, as well as of independent local banks, should be encouraged. To this end, the following policies, among others should be adopted:

a. Former owners of independent financial institutions which have been merged with Zaibatsu concerns should be encouraged to reestablish their old enterprises by forced divestitures. In this connection, a procedure should be set up whereby former owners of merged banks, trust companies, or insurance companies should have the opportunity, for a limited period of time, to compel the institutions into which their organizations were merged to divest themselves of assets and liabilities to the extent necessary to reconstitute the absorbed institutions in adequate size.

Enclosure "B"

DECLASSIFIED
Authority 775018

-9-

~~CONFIDENTIAL~~

FEC-230
REGRADED UNCLASSIFIED
ORDER SEC ARMY BY TAG PER
720014

~~CONFIDENTIAL~~

~~CONFIDENTIAL~~

b. Banks over a size to be specified by SCAP should be required to split themselves into two or more independent units within a stated period, as should other banks deemed by SCAP to enjoy a monopolistic position in the field which they serve. The permissible size should be set at a level sufficiently low to force a significant number of such actions and thus greatly increase the number of independent sources of credit, but sufficiently high to guard against the dangers of financial insecurity associated with excessively small banks.

11. Financial Alliances

Alliances between any financial and non-financial enterprises, and alliances among any financial enterprises, should be broken. To this end:

a. Banks and trust companies should be prevented from investing more than 10% of their capital and reserves in the securities, loans, bills, advances, and overdrafts of any one company.

b. Such concerns should not be permitted to hold, either as an owner of record or as the holder of a beneficial interest, in their proper, savings, or trust accounts, the stock of any other company in an amount which exceeds 5% of the outstanding shares of that company, nor to vote any such stock which they may hold. Nor should they be permitted to own any stock in a competitor. Exemption should be made to the percentage rule for stock acquired in connection with bona-fide underwritings and to the percentage and voting rules for stock acquired in default of loans, but any such exemptions should not run longer than one year.

c. Officers and directors of any bank or trust company, and persons holding 5% or more of the stock thereof, should be ineligible to hold any office or directorship or similarly large percentage of stock in any other company. Exception should be made for part-time non-policy making employees, such as attorneys and certifying accountants, but such exceptions should be defined as narrowly as possible.

d. No bank or trust company should be allowed to redeposit more than 10% of its deposits in any one institution other than the Bank of Japan.

12. Elimination of Financial Discrimination

To eliminate discrimination in favor of Zaibatsu banks:

a. A system of deposit insurance should be instituted, to diminish the belief among depositors that accounts in Zaibatsu banks are safer than elsewhere. A limit (e.g., of the order of magnitude of ten billion yen) should be set to the total amount of deposits which will be insured for a single bank. A limit should also be set to the amount of deposits which will be insured for a single account.

b. The Postal Savings System should ultimately be required to deposit its funds in ordinary banks, allocating at least 90% of what it receives in any regional grouping of prefectures among the banks having head offices in that region in proportion to the assets of such banks. A bank ineligible for deposit insurance should also be ineligible to receive the redeposits of the postal savings system.

Enclosure "B"

-10-

DECLASSIFIED
Authority 775018

~~CONFIDENTIAL~~

FEC-230
REGRADED UNCLASSIFIED
ORDER SEC ARMY BY TAG PER

720014

~~CONFIDENTIAL~~

c. Legislation should be introduced to improve the standard of commercial banking and to prevent banks from undertaking business considered unwise for commercial banks. (Performance of investment banking functions by commercial banks should not be prohibited, however, until suitable alternative agents for these functions become available.) Such legislation should also assign to the Bank of Japan, or to some other suitable public agency, powers of direction and inspection over other banks, whose activities would be required to conform to statutory provisions regarding capital, reserves, investment policy, and other matters. The discretion which the laws now entrust to the Minister of Finance, in this connection, should be greatly reduced, and his functions clearly defined by law and made subject to check and review by the Diet. His powers to legislate by ordinance and regulation should be strictly curtailed and limited to genuine emergencies. Bank examinations should take place at least every two years.

d. The functions and powers of special banks should be defined and limited by law, and these banks should not be allowed to engage in ordinary banking. The need for the existence of the special banks should be reviewed, in order to determine whether certain of these banks might not revert to the status of ordinary banks.

e. All vestiges of private ownership of the Bank of Japan should be eliminated. The Board of directors should be made representative of finance, trade, industry, agriculture, and of large, medium, and smaller size business.

f. Competition among banks for customers should be restored through such measures as the abolition of the designated bank system and of the financial control associations.

g. Employees performing responsible functions in the Ministry of Finance and government banks should be forbidden to hold the securities of any financial institution, and should be ineligible for employment by private financial institutions for two years after they leave government employment.

13. Government Support of Industrial Monopolies

Laws and practices through which the Japanese Government has favored the growth of private monopolies should be terminated; although that Government should not be deprived of its power to regulate the Japanese economy in the public interest. To this end:

a. Laws and ordinances establishing existing control associations or special companies should be generally repealed and the associations or special companies abolished. The future assumption, by non-governmental agencies, of powers formerly exercised under these laws, should be prohibited. The future assumption, by governmental agencies, of such of these powers as have no major use other than to support monopolistic bodies and practices should also be prohibited. Necessary governmental functions formerly performed by control associations or special companies should be transferred to appropriate governmental agencies, which agencies should be created where they do not now exist. In cases where SCAP is satisfied that current conditions

Enclosure "B"

-11-

FEC-230

DECLASSIFIED
Authority 775018

REGRADED UNCLASSIFIED
ORDER SEC ARMY BY TAG PER

~~CONFIDENTIAL~~

720014

~~CONFIDENTIAL~~

prevent the government from effectively performing these functions, and is further satisfied that effective performance of these functions is necessary for public purposes, he may allow temporary delegation of these functions by the government to the old control associations or special companies or to similar new quasi-private bodies, provided that final decisions are made by the government and that rights of appeal to the government against abuse of powers are provided. All quasi-private bodies exercising such delegated functions should be liquidated as soon as their functions can be transferred to appropriate government agencies, or at such sooner time as SCAP may find the exercise of their functions to be no longer necessary. (For example, where these functions relate to allocation, or price and trade control for reconversion purposes, their performance could be terminated upon the expiration of the reconversion period.)

b. All legislation which forbids, or requires governmental approval of, the entry of any new business into an industry, or the expansion of any business, should be terminated, except in so far as:

(1) the right to effect such a restriction is implicit in the anti-trust legislation suggested below;

(2) the right to effect such a restriction is necessary in order to comply with SCAP directives dealing with industrial disarmament and other subjects;

(3) non-discriminatory restrictions for generally accepted public purposes, such as protecting the public against fraud, and protecting the public health, are concerned;

(4) fields of business activity reserved to the national or local governments are concerned. In this connection, pre-war laws which set up clear-cut government monopolies should be left undisturbed; but, to prevent the use of this type of law to evade other portions of the anti-Zaibatsu program, the creation of new government monopolies during the period of the occupation should be permitted only in cases where they are in the public interest or where their creation is in accordance with the policy for sale of divested holdings to the national and local governments described in paragraph 7 a above. The petroleum and alcohol monopolies, which were instituted for war purposes, should be terminated as soon as possible.

c. All laws and practices under which the government has favored specific private or quasi-private enterprises, to the detriment of potentially or actually competitive enterprises, should be systematically reviewed, and such of these laws and practices as do not have a demonstrable public purpose should be terminated. In so far as any subsidies are allowed to continue, or are granted in the future, they should be controlled by the legislative branch of the government, and provision should be made that hereafter their amount, purpose, and effect be disclosed in public reports.

Principles such as those set forth in the preceding subparagraphs should be made effective, not only by changes in substantive law, but also by provisions giving aggrieved persons the right to attack in the courts any discriminatory subsidy, preference, or other practice.

Enclosure "B"

-1a-

FEC-230
REGRADED UNCLASSIFIED
ORDER SEC ARMY BY TAG PER

DECLASSIFIED
Authority 775018

~~CONFIDENTIAL~~

720014

~~CONFIDENTIAL~~

~~CONFIDENTIAL~~

14. Anti-Trust Law

A Japanese anti-trust law should be enacted, prohibiting, among other things:

a. concerted business activity which burdens trade, including, but not by way of limitation to, such activities as fixing of prices, restriction of sales or output, and allocation of markets, commodities, or customers;

b. individual or concerted activity which has the purpose or effect of coercing business enterprises to conform to business policies, or participation in programs carried on by the coercing concern or group which are designed to drive selected enterprises out of any line of business, through means which include but are not limited to intimidation of a rival's customers or sale to a rival at discriminatory prices;

c. the creation of excessive concentrations of economic powers, as such concentrations are defined in paragraph 2; (where considerations of structural or technological unity require the creation of large concentrations, government ownership or strict regulation of these concentrations should be provided for);

d. types of industrial growth and of intercorporate connection which are particularly likely to lead to monopoly or to excessive size, including mergers (i. e., acquisitions of any substantial portion of the capital assets) of going concerns of other than negligible size which are in competition with one another, or mergers of non-competing concerns which might lead to the creation of large scale enterprises capable of developing into an excessive concentration of economic power, where such mergers are not explicitly found to be required in the public interest.

e. types of inter-corporate relations (e. g., those described in paragraph 4 d) which restrain competition.

This anti-trust law should be enforced by a specialized agency operating at a high governmental level and exercising broad investigatory and remedial powers. Consideration should be given to including in this agency representatives of the groups most likely to be aggrieved by excessive corporate growth; in any event, special care should be taken not to allow representatives of large scale business, or of political groups sympathetic to large scale business to be named to this agency.

Exemption from the provisions of this law should be provided for the joint activities of cooperatives, where such activities are not coercive or monopolistic, and where they are conducted accordingly to the democratic principles characteristics of genuine cooperatives. Similar exemption should be provided for labor activities other than those involving the restriction of commercial competition, and for natural monopolies and public utilities in so far as they are owned or closely regulated by the government.

15. Patent Law

The provisions and the manner of enforcing Japanese patent law should be revised to ensure that patents in Japan cannot be used to support the establishment or perpetuation of concentrations of economic power.

Enclosure "B"

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16. Corporate Law

The following changes in Japanese corporate law should be effected:

- a. Disclosure of relevant facts in selling corporate securities should be required, and the fraudulent practices in connection with such sales should be prohibited.
- b. Before any call to a meeting of the stockholders of a corporation, the management of the corporation shall make full disclosure of all the facts necessary for the stockholders to appraise intelligently the proposals to be placed before the meeting.
- c. Misleading practices in corporate accounting should be forbidden, and minimum standards of disclosure in such accounting should be required.
- d. Inter-locking officerships should be prohibited, and officers of one concern should be prohibited from serving as directors of another. Interlocking directorates should be prohibited in the case of competing concerns and in the case of concerns which rent, sell, or buy goods or services to or from each other in significant amounts. In the case of other concerns, interlocking directorates should be allowed to the point where no more than one fourth of the members of any Board of Directors are at the same time directors of other corporations. No one person should, however, be allowed to serve on the Board of Directors of more than three corporations. Nothing in this paragraph should be taken as in any way modifying the provisions of paragraph 11 c. Officers and directors should be prevented from having holdings of shares in competing or supplying concerns, and should be prevented from having holdings of shares in any other enterprises representing more than 5% of their liquid assets or more than 5% of such other enterprises' outstanding shares. Officers, directors, and person having a beneficial interest in or control of any equity issue of a corporation in excess of one percent of the total issue should be required to report their holdings and transactions in all issues of the corporations, and such reports should be publicized. Profits of corporate insiders derived from short-term transactions in the corporation's securities should be subject to recapture by the corporation.
- e. An ultra vires action by a corporation should be grounds for remedial action by a stockholder or punitive action by a public agency. Moreover, a corporation should be specifically prohibited from entering partnerships, either directly or indirectly, or in other respects avoiding the limitations on intercorporate relationships.
- f. It should be required that all shares having par value should be fully paid, and that equal voting rights attach to all shares of the same issue: The use of no par value shares should be permitted; such shares to be offered for sale at any time at a value to be decided by the company's board of directors. All corporations should be required to adopt the principle of pre-emptive rights in offering new shares.
- g. Every effort should be made to assure the independence of Japanese auditors, who should be prevented from having direct or indirect affiliations with management and from having conflicting interests in other concerns.

Enclosure "B"

-14-

DECLASSIFIED
Authority 775018

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h. With stated exemptions for banks, investment trusts, insurance companies, and possibly other types of financial institutions, the Japanese company law should be amended to forbid one corporation from holding the stock of another. The use of 100% owned subsidiaries should be permitted, however (subject to the restrictions on mergers outlined under paragraph 14 d.).

i. Stockholders should not be unduly hampered in bringing suits against management for money damages or for equitable remedies.

17. Tax and Inheritance Laws

In connection with current and impending revisions of Japanese tax law, every effort should be made to favor the wide distribution of income and ownership envisaged in this paper, through the following means:

a. Income and inheritance taxes should be very much more steeply graduated than they are at present.

b. Property inherited by the head of a house should be subject to the tax rates applicable to other heirs.

c. Diffusion of inherited wealth should be assured by provision for reasonably equal distribution among heirs, insofar as estates aggregating considerable wealth are concerned.

d. Members of a house should be prevented from deriving significant tax advantages from the insolvent status of other members of the house.

e. The present discretionary power of the Minister of Finance in tax matters should be greatly reduced. Tax rates should be fixed by the Diet.

18. Policy Concerning Preferred Purchasers

Measures specified below should be taken in order to strengthen and democratize preferred categories of purchasers of divested holdings:

a. In order to qualify Japanese cooperatives for purchase preference in connection with divested holdings, such cooperatives should be freed from governmental influence and should be relieved of public functions. They should be subject to government supervision, only insofar as such supervision is necessary to prevent fraud and to ensure compliance with the provisions of this paragraph. Membership in these cooperatives should be voluntary, and requirements for membership therein should be non-discriminatory. (In this connection, the minimum contribution or entrance fee should be reduced to the point where it will form no obstacle to the membership of low income persons.) All participating members should have equal votes and officers should be selected by majority vote. The proceeds should be divided equally among members or in proportion to the relative volume of business, without allowance, beyond a low fixed dividend, for contribution of capital. In addition to being converted into genuinely democratic instruments through these and other changes, cooperatives should be freed from all legal restrictions which prevent them from engaging in various kinds of activities. Specifically, consumers' cooperative societies should be recognized and afforded the same type of privilege as other cooperative societies. The minimum number of members qualifying for

Enclosure "B"

-15-

FEC-230

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registration under the Cooperative Societies Law should be raised from the present figure of seven to levels which will vary for different types of societies but which should be sufficiently high in each case to prevent domination by minorities. Genuine cooperative societies should receive such public financial and technical aid as may be necessary to their expansion.

b. Where the possibility exists that trade unions might purchase Zaibatsu holdings, all possible technical and financial assistance should be furnished the trade unions concerned, provided that these unions are genuine labor organizations, and are not acting as cloaks for former owners. As a means of providing for trade union ownership of divested holdings, consideration should be given to assigning ownership of divested holdings to cooperative societies organized especially for this purpose, with a membership parallel to that of trade unions.

c. Small entrepreneurs desiring to purchase divested holdings should be given all possible public assistance so that they may compete on more advantageous terms with large scale business. The Japanese Ministry of Commerce should establish a bureau specifically devoted to aiding such small business. This bureau should give special support to the performance of joint activities of an unrestrictive character by such mutual-aid organizations of small entrepreneurs as manufactures' guilds and export guilds. Precautions should be taken, however, against domination of these guilds by the government or by the larger firms; nor should they be permitted to engage in such of their former activities as were in restraint of trade.

19. Public Support

Vigorous efforts should be made by SCAP to create Japanese public understanding of, and support for, the anti-Zaibatsu program through such means as:

a. provision for access to recent literature in English about the problems of industrial organization;

b. publication of SCAP's factual findings about the Zaibatsu;

c. encouragement of the organization of a Japanese commission of inquiry, representative of a wide range of interests and opinions, to investigate the facts about the Zaibatsu and make public its recommendations;

d. attention to the problems of industrial organization, and the dangers of monopoly and excessive concentration of economic power in the revision of the Japanese educational system;

e. provision for contact between the Japanese anti-trust agency and similar bodies in other countries.

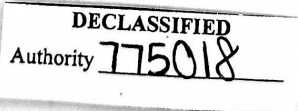
A special attempt should be made to furnish relevant data to, and to secure the support of, those groups whose economic interests are most acutely promoted by the dissolution of the Zaibatsu: consumers, small and medium-size businessmen, trade unions, and cooperatives.

Enclosure "B"

-16-

FEC-230

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20. Japanese Government

An attempt should be made to deprive the Japanese Government of its former pro-Zaibatsu character, and to prevent renewed alliances between the bureaucracy and business interests:

a. SCAP should make every effort to see that new public agencies established in order to carry out the anti-Zaibatsu program envisaged in this paper are staffed with individuals not previously associated with or sympathetic to large scale business or its political spokesmen. Economist and other intellectuals or technical experts hitherto debarred from government work because of their anti-imperialist or anti-Zaibatsu views would be desirable recruits.

b. In view, however, of the limited availability of such persons, and of the uncertain political complexion of the present Japanese bureaucracy, SCAP should reduce the discretionary policy-making authority of that bureaucracy in so far as the more important issues related to this program are concerned. In economic matters at least, the Japanese bureaucracy should not be left in a position to usurp the functions of the legislative branch of the government.

c. Existing government officials performing responsible functions relating to the control or regulation of private industrial, commercial, or financial enterprises should be discharged where, because of their past employment in Zaibatsu concerns or other previous private or public actions, they are believed sympathetic to Zaibatsu interests.

d. Government officials performing responsible functions relating to the control or regulation of private commercial, industrial, or financial enterprises should be prohibited from holding the securities of any one such private enterprise in an amount which would represent more than 5% of the official's total wealth, or more than 1% of the enterpriser's capital value. Reports of all security holdings by such government officials should be made public. Such officials should also be prohibited within a period of two years after their leaving of government employ, from accepting private positions which involve their representing, directly or indirectly, private enterprises before the government bureaus with which they were formerly associated, or from holding positions in any private enterprise which is the object of legal action as a result of its alleged violation of any of the measures specified in this paper.

e. Special procedures should be set up to make public the names of government officials holding responsible positions relating to the control or regulation of private, commercial, industrial, or financial enterprises, so that anti-Zaibatsu groups and persons may scrutinize their past records and protest publicly against appointments which they consider unsuitable.

f. The principle of private redress for injury suffered as a result of governmental action should be recognized in Japanese law.

21. United Nations and Neutral Interests

In the application of measures specified in this paper,

Enclosure "B"

-17-

FEC-230

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SCAP should protect the interests of nationals of members of the United Nations in Japan, in so far as this can be accomplished without limiting the effectiveness of these measures. In general, his objective should be to provide adequate, prompt and effective indemnification for property taken from such interests to the extent feasible. He should also keep full records of any change in the status of such interests which may result from the application of these measures.

22. Non-Profit Corporations

An exception should be made to the provisions of this paper affecting interlocking officerships and directorates insofar as these provisions concern non-profit corporations which are devoted to public, charitable and cultural purposes and which do not hold securities of other corporations.

Enclosure "B"

-18-

FEC-230

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